In the High Court of Judicature at Madras

Dated:21.09.2006

Coram:

The Hon'ble Mr.Justice P.SATHASIVAM
and
The Hon'ble Mr.Justice S.MANIKUMAR

Habeas Corpus Petition No.744 of 2006

Hatheem .. Petitioner

vs.

1. The District Magistrate
   and District Collector
   Erode District,
   Erode.

2. State of Tamil Nadu
   rep. By Secretary to Government
   Food, Co-operation and Consumer
   Protection Department
   Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of habeas corpus as stated therein.

For petitioner : Mr.B.Kumar,Sr.counsel
for Mr.C.Prakasam

For respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner Hatheem, father of the detenu by name Kaja Moiddheen, who was detained as a "Black Marketeer" as contemplated under Section 3(2)(a) read with 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, by the impugned detention order dated 09.07.2006, challenges the same in this Petition.

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2. Heard learned senior counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents.

3. Mr.B.Kumar, learned senior counsel for the petitioner after pointing out several discrepancies in the documents relied on, particularly the quality certificates issued by the Civil Supplies Corporation, Erode Region, submitted that in the absence of proper explanation by the person concerned, the ultimate detention order passed by the detaining authority cannot be sustained. Elaborating the above contention, learned senior counsel for the petitioner took us through the quality certificates issued by the Quality /Assistant Quality Control Inspector, and pointed out the relevant portion of the certificates, which read as under.

> "இந்த மாதிரி என்னால் பகுப்பாய்வு, செய்யப்பட்டது, இம்மாதிரியின் தரம் சீரான நிர்ணயத்தில் கூறப்பட்ட ஒத்துக் கொள்ளும் நிலையில் உள்ளது / இல்லை என்ற சான்றிதழ் வழங்கின்றேன். மேலே கண்ட பொருட்கள் கீழ்கண்ட காரணங்களில் இருந்து பொது விநியோகத்திட்ட அரிசி தான் என தீர்மானிக்கப்படுகிறது. 1.ஸ்டோரேஜ் ஸ்மெல், 2. குஊஐ சாக்குபைகள் மற்றும் தைக்கப்பட்ட நூல்களின் நிறம், 3. பாலிஸ் செய்யாமல் காணப்படுதல்.
>
> (ஒப்பம்) எஸ் வேலுசாமி (ஒப்பம்)எல்.எஸ். துரைசாமி
> தர ஆய்வாளர் / உதவி உதவித் தர ஆய்வாளர் /
> மேலாளர் தர ஆய்வாளர்.
> தமிழ்நாடு நுகர்பொருள்
> வாணிபக்கழகம்
> ஈரோடு."

According to the learned senior counsel for the petitioner, in the penultimate paragraph the irrelevant statements have not been scored out. He further contended that what was the sample seized ordered to be sent for analysis by the Court was not analysed. He further pointed out that there is no acceptable material to hold that the seized rice belongs to Public Distribution System (PDS). He also submitted that irrelevant materials have been referred to in the quality certificates.

4. In the light of the said contention, we verified the quality certificates which are available at pages 39 and 39-A of the paper book. We also considered the explanation offered by the detaining authority in his counter affidavit. It is seen that based on the reliable information about hiding and smuggling of PDS ration rice, Inspector of Police, Civil Supplies Criminal Investigation Department, Erode Unit, after getting search warrant from Judicial Magistrate No.III, Erode, searched the premises situated at Apachi Ayya Thottam, in front of TASMAC Godown, Bhavani Main Road,

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Suriyampalayam Village, Erode Taluk. The Officer and his team found 755 bags of PDS ration rice each weighing about 50 Kgs. were loaded in the lorries bearing registration Nos.KA-05 AF 7475, KA-01 AA 9585, KA-01 AD 3247, TN-27 R 6422, TNB 9588. They also found 115 bags PDS rice each weighing about 50 Kgs. in the godown. During the search, the Inspector of Police, examined one Kajamoidheen, who gave a voluntary confession in the presence of witnesses admitting that he illegally purchased the PDS rice for Rs.5/- per Kg. from the public of Kumarapalayam, Kuruppanaickenpalayam, Kalingarayanpalayam, Lakshmi Nagar near Bhavani in order to smuggle the rice to Karnataka State for selling the same at Rs.10/- per Kg. so as to gain more profit. It is further seen that the sample of the seized rice was sent for analysis to the Regional Laboratory of Tamil Nadu Civil Supplies Corporation, Erode and the Assistant Manager and Quality Inspector certified that the seized rice belonged to Public Distribution System. On the basis of the materials and after satisfying himself that the detenu had been dealing in rice which is an essential commodity as defined in Essential Commodities Act, 1955 with a view to dispose of the same at higher price in black market and the activities of the detenu are prejudicial to the maintenance of supplies of commodities essential to the community, detained him as a Black marketeer under Act 14 of 1982.

5. Though the learned senior counsel made an attempt to question the mode of samples (மாதிரி) being taken and the analysis, the document annexed to the grounds of detention makes it clear that from the seized bags, samples were taken in the presence of the detenu and others and sent for analysis with mahazar duly signed by two witnesses. We also verified the confession statement of the detenu and others, statement of the Officers, contents of documents, such as F.I.R. Observation Mahazar, remand requisition, remand order, requisition for analyst's report and quality certificate issued by the Civil Supplies Corporation and we do not find any discrepancy or vagueness in the quality certificates issued by the Officers. It is evident from the original certificates produced by the learned Additional Public Prosecutor that there are enough materials to show that the seized rice belongs to PDS. No doubt, a comment was made with reference to mentioning of gunny bags of FCI and colour of the jute in the documents. A perusal of the contents of FIR, confession statements of the detenu and others and the statements from other Officers clearly shows that the detenu and others purchased the rice sold through PDS shops and stored in their godown in gunny bags with an intention to sell the same at higher rate in Karnataka. As a matter of fact, the expressions "storage smell" and "not polished" are explained in the statement of analysts (vide page 43 and 44 of the paper book). Likewise, the expressions "stitching of gunny bags" and "colour of the thread" are also explained by the witnesses. Their statements are also available in the paper book. In the light of the factual details which are available in the documents annexed to the

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grounds of detention, we are unable to accept the contention raised by the learned counsel for the petitioner.

6. Except the above grounds, no other ground has been raised before us.

In the light of what is stated above, we do not find any error or infirmity in the impugned order of detention and there is no valid ground for interference. Hence, this petition fails and the same is dismissed.

Kh

Sd/-
Asst. Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government
   Food, Co-operation and Consumer
   Protection Department
   Chennai 600 009.

2. The District Collector
   and District Magistrate
   Erode District, Erode.

3. The Public Prosecutor
   High Court, Madras.

+ one cc to Mr.C.Prakasam, Advocate Sr.No.44513.

PV (CO)
RSM/27.9.2006

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